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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Third periodic report submitted by Benin under article 19 of the Convention, due in 2011*, **

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* The Committee considered the second periodic report of Benin (CAT/C/BEN/2) at its 797th and 800th meetings, held on 15 and 16 November 2007 (see CAT/C/SR.797 and 800). Having considered the report, the Committee adopted conclusions and recommendations (CAT/C/BEN/CO/2).

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Part I
Introduction: General framework

1. Benin ratified, without reservation, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 12 March 1992, and subsequently its Optional Protocol on 20 September 2006. It submitted its initial report in 2001 and its second periodic report in 2007. The constitutional and legal framework for the implementation of the Convention is not governed by the principle of conditionality provided for in the Constitution. Since its ratification in March 1992, the Convention has been an integral part of the Beninese legal framework and, as such, may be invoked by litigants.

2. The present report is submitted pursuant to article 19 of the Convention against Torture.

3. It has been prepared in accordance with the Committee's guidelines and is divided into three sections:

- Information on new measures and developments relating to the implementation of the Convention
- Additional information
- Responses to the observations made by the Committee following its consideration of the country's second periodic report.

4. The report was prepared using a participatory approach and includes contributions from representatives of various ministries who are members of the national committee responsible for monitoring the implementation of international instruments and from representatives of non-governmental organizations (NGOs) who are members of the National Advisory Council on Human Rights.

5. The third periodic report sets out the measures taken to develop the legislative, judicial and criminal justice systems and to strengthen the mechanisms for protecting individual and public freedoms and human rights, bearing in mind their universal and indivisible nature.

Part II
Information on new measures and developments relating to the implementation of the Convention, following the order of articles 1 to 16, as appropriate

1. General information on the new measures taken by the State party to implement the Convention between the submission of its previous report and the submission of the present report

6. These measures are intended to reduce poverty, strengthen good governance, promote and protect all human rights, including the right to development, and enable the organization of free and transparent elections.

- Nearly all ministries have developed procedural manuals specifying the supporting documentation to be submitted, and the time frames, for obtaining the services and documents that they provide to users. This information is displayed on huge billboards at the entrance of these ministries or departments and is also available on the Internet.
- Ministries have set up user relations departments.
- A "public service month" is held to clear the backlog of cases pending before State authorities.

- The principle of "credible and accessible justice" is being translated into reality. Act No. 2001-37 of 27 August 2002 on the organization of the judiciary in Benin is being implemented with the establishment of courts to improve people's access to justice. Of the planned total of 28 courts of first instance, 14 are operational, with six new courts now complementing the eight already in existence. Three courts of appeal are currently operational.
- The Act on the organization of the judiciary has been revised.
- A new prison has been operating since 2015 in Abomey-Calavi to ease overcrowding in Cotonou prison. At the same time, measures are being taken to reduce the prison population pursuant to the Code of Criminal Procedure.
- All prisons except that of Akpro-Missérété are still overcrowded.
- The building of new prisons in Abomey, Parakou and Savalou was funded by Benin itself, and the work has now been completed.
- After the publication of the Ombudsman's annual report in 2011, the President visited Cotonou civilian prison, which is the most overcrowded in Benin, to see first-hand the shortcomings identified in the report.
- Measures such as presidential pardons and parole were adopted to ease prison overcrowding.

7. Following the President's visit, instructions were issued with the aim of improving detainees' access to drinking water, electricity and health services. Further steps are being taken to make places of detention more humane and to bring them into greater conformity with applicable international standards.

8. To solve the problem of overcrowding, poor hygiene, inadequate emptying of septic tanks and the diseases that these shortcomings cause, a health plan for prisons was adopted in December 2015.

9. Other noteworthy developments include:

- The adoption by the National Assembly of the Community Service Act on 16 June 2016;
- The drafting of a bill on the prison system, which is being reviewed by the Supreme Court;
- The drafting of a bill on the creation of a professional prison service.

10. New laws reorganizing the judiciary have also been adopted. By Decree No. 425 of 20 July 2016 on responsibilities, organizational structure and functioning, the Ministry of Justice, Legislation and Human Rights became the Ministry of Justice and Legislation.

11. National and international NGOs support Benin in the area of human rights through various activities: studies, training, campaigns to publicize legal instruments, as well as material and technical support through the implementation of various projects to make the judicial system more accessible and more effective.

2. Recent developments relating to the implementation of the Convention

12. During the period under review, studies, articles and reports to treaty bodies were drafted to provide information on the steps taken to implement the Convention.

2.1 Reports and other documents already available

13. The following documents were taken into account in drafting the third periodic report:

- The second periodic report of Benin on the implementation of the Convention against Torture, submitted to the Committee against Torture in November 2007 (CAT/C/BEN/2)

- Consideration of the second periodic report of Benin, submitted to the Committee against Torture (under article 19) in November 2007; alternative report on the implementation of the Convention against Torture
- The report of the Subcommittee on Prevention of Torture on its first visit to Benin, from 17 to 26 May 2008, containing its recommendations and the information provided by Benin (CAT/OP/BEN/1)
- The second periodic report of Benin on the implementation of the International Covenant on Civil and Political Rights
- The civil society report on the implementation of the International Covenant on Civil and Political Rights (replies to the list of issues (CCPR/C/BEN/Q/2), September 2015
- The joint alternative report of the International Federation of Action by Christians for the Abolition of Torture (FIACAT) in Benin on the implementation by Benin of the International Covenant on Civil and Political Rights, submitted to the Human Rights Committee at its 115th session, held in October–November 2015
- The second report of Benin under the universal periodic review, October–November 2012
- The combined draft report of Benin on the implementation of the African Charter on the Rights and Welfare of the Child from 1997 to 2015, submitted in July 2015
- The report of the African Peer Review Mechanism: Country Review Report No. 6 on the Republic of Benin, January 2008
- The civil society report on the implementation of the International Covenant on Civil and Political Rights in Benin (replies to the list of issues (CCPR/C/BEN/Q/2) Cotonou, September 2015
- The updated version of the alternative report submitted by FIACAT, the World Organisation against Torture (OMCT), the national coordinating council of Action by Christians for the Abolition of Torture (ACAT) in Benin and the Association of Women Jurists of Benin (AFJB) in response to the periodic report of Benin on the implementation of the African Charter on Human and Peoples' Rights for the forty-fourth session of the African Commission on Human and People's Rights, on the basis of a follow-up mission conducted in November 2008 by FIACAT and OMCT in Benin
- Consideration of reports submitted by States parties to the Committee on the Elimination of Discrimination against Women under article 19 of the Convention on the Elimination of All Forms of Discrimination against Women, fourth periodic report of Benin (CEDAW/C/BEN/4) (submitted 24 June 2011)
- Report of the Committee on the Elimination of Discrimination against Women, concluding observations in relation to the fourth periodic report of Benin (CEDAW/C/BEN/4), fifty-sixth session, 30 September–18 October 2013
- The report of the pre-session working group in relation to the consideration of the fourth periodic report of Benin (CEDAW/C/BEN/4)
- The list of issues raised by the Committee on the Elimination of Discrimination against Women (CEDAW/C/BEN/Q/4) and the replies of the Government of Benin (CEDAW/C/BEN/Q/4/Add.1)
- 2013 Human Rights Report of the United States Department of State — Benin — executive summary
- 2014 Human Rights Report of the United States Department of State — Benin — executive summary
- 2015 Human Rights Report of the United States Department of State — Benin — executive summary

- Human Development Report of the United Nations Development Programme (UNDP), August 2016
- Millennium Development Goals — UNDP report, May 2013 — report on the national consultations on development priorities after 2015
- Patrick Mützenberg and Eric Sottas — "La violence étatique au Bénin" [State violence in Benin] — an alternative report submitted to the Human Rights Committee, and the observations of the Committee
- Combined third, fourth and fifth periodic report of Benin on the implementation of the Convention on the Rights of the Child (CRC/C/BEN/3–5) (period 2003–2011)
- The UNDP *Human Development Report 2016*
- Articles written on the human rights situation in Benin
- The document entitled "Benin: Forced marriage, including the frequency, the practice and the groups involved; legislation; protection and assistance provided by the state and civil society (2010–July 2013)"
- The document entitled "PNUD - Situation de la femme au Bénin en 2013" [UNDP — situation of women in Benin in 2013]

2.2 A new judicial map

14. Benin now has a new judicial district map.

15. In 2011 and 2012, the Government, in order to improve access to justice, updated the country's judicial district map by establishing six new courts in Abomey-Calavi, Djougou, Savalou, Aplahoué, Pobé and Allada. However, with the exception of the court in Abomey-Calavi, they have no civilian prisons or jails. A plan for the construction of new prisons is being developed.

2.3 The establishment of two "child-friendly" courts or "courts sensitive to and adapted to the needs of children"

16. These spaces were created with the support of the United Nations Children's Fund (UNICEF) within the courts of Abomey-Calavi and Abomey, which are known as "courts sensitive to and adapted to the needs of children" or more commonly as "child-friendly courts".

2.4 The involvement of the National Assembly in human rights issues

17. The Law Commission of the National Assembly organized a series of visits to prisons and courts and presented its findings during the fifth extraordinary session of the National Assembly in October 2016.

18. At the conclusion of the visits, the Commission condemned the appalling living conditions of detainees in prisons and their conditions of transportation.

2.5 The creation of a private space by the NGO Prisonniers sans frontières [Prisoners without borders], with the support of the European Union, in Cotonou civilian prison in October 2016

19. This is a room where detainees may consult their lawyers in private.

2.6 The participation of Benin in programmes to combat violence against children

20. A judge representing the Supreme Court of Benin and the African Association of Francophone Supreme Judicial Courts participated in the development and dissemination of a handbook entitled "Listening to and supporting child victims of violence", with the support of the International Organization of la Francophonie and FRANCOPOL in Rabat, Morocco in 2015. Another judge from the Benin prosecution service helped to train prosecutors on the handbook in Abidjan, Côte d'Ivoire in 2016.

2.7 The establishment of a counselling and legal support service for victims of gender-based violence

21. The setting up of a counselling and legal support service for victims of gender-based violence in 2010 allowed the competent institutions to take in 31,826 persons in 2013 and to monitor 13,765 victims of gender-based violence, improving the institutional framework (according to UNDP).

2.8 The advent of new projects to support the justice system

22. Following the integrated programme to strengthen the legal and judicial system, the project to support the justice sector and the Millennium Challenge Account I — Benin, new projects are being implemented in the justice system, including:

- The project to improve access to justice and accountability
- The project to support justice reform.

3. Any legislative or institutional changes affecting the implementation of the Convention in any territory under Beninese jurisdiction, including in respect of places of detention and the training given to law enforcement and medical personnel

3.1 Improvement of the normative framework

At the national level

23. Significant improvements have been made at the normative level, including:

- The adoption of Act No. 2011-20 of 12 October 2011 on combating corruption and related offences;
- The adoption and promulgation of Act No. 2011-26 of 9 January 2012 on the prevention and punishment of violence against women;
- The adoption of Act No. 2012-21 of 27 August 2012 on combating the financing of terrorism;
- The adoption of the new Code of Criminal Procedure on 17 December 2012;
- The adoption of Act No. 2012-36 of 15 February 2013 establishing the Benin Human Rights Commission;
- The adoption of Act No. 2015-08 of 8 December 2015 introducing the Children's Code, which was promulgated and published in the Official Gazette on 30 March 2016;
- The adoption of Act No. 2016-12 of 16 June 2016 on community service;
- The draft criminal code, which is in the process of being adopted;
- The adoption of Act No. 2011-11 of 25 August 2011 authorizing accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims at the abolition of the death penalty — and the subsequent accession of Benin to this instrument on 5 July 2012, followed by its entry into force for the country on 5 October 2012;
- The adoption of Act No. 2011-15 of 23 August 2011 authorizing the ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa;
- The adoption of Act No. 2011-17 of 23 August 2011 authorizing the ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol;
- The adoption of Act No. 2011-18 of 25 August 2011 authorizing the ratification of the African Charter on Democracy, Elections and Governance.

24. A number of bills have been drafted but not yet adopted.

25. These include a bill on the national preventive mechanism, a bill on the prison system and a bill to establish a nationwide cadre of prison workers.

At the regulatory level

- The adoption of Decree No. 2012-416 establishing the norms and standards applicable to reception and protection centres for children;
- The adoption of Decree No. 2011-029 of 31 January 2011 listing the types of work considered hazardous for children;
- The adoption of a decree in 2014 establishing integrated support centres for victims of gender-based violence.

Agreements

- The adoption of the market users' charter of 10 October 2014 to prevent and combat the economic exploitation of children;
- The adoption of the market users' memorandum of understanding of 10 October 2014 to prevent and combat the economic exploitation of children;
- The adoption of the mine operators and artisanal miners' charter of commitment of 21 February 2014, together with the dissemination of materials to the actors involved in combating child labour in mines and quarries.

26. At the non-State level, the National Observatory for the Protection of Children against Trafficking and Labour Exploitation prepared and published a three-year report on these phenomena in 2009.

27. There are also local committees to combat child trafficking. Surveillance brigades for that purpose have been set up in Sèmè-Podji, a commune located on the border with Nigeria.

Pursuant to the country's international commitments and to agreements concluded between it and other countries

- The ratification by Benin of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights in September 2014;
- The signing of the Benin-Congo bilateral agreement on cooperation in preventing and combating human trafficking, particularly that of women and children, in September 2011, followed by the signing by both parties of an action plan in January 2012;
- The conclusion of agreements between Benin and neighbouring countries on human trafficking.

3.2 Institutional developments

The establishment in Benin of a national human rights institution in accordance with the Paris Principles

- Act No. 2012-36 of 15 February 2013 established Benin Human Rights Commission, an institution in accordance with the Paris Principles.
- The process of setting up the institution is ongoing.

Policies, strategies and programmes for the protection and promotion of human rights

28. These include:

- The adoption of the national plan to combat trafficking in children (2008–2012), the aim of which is to identify and assess the situation concerning trafficking in children, and which is also intended to define and strengthen legal, institutional and

organizational frameworks for prevention and for the recovery and reintegration of child victims of trafficking;

- The adoption, in June 2016, of a national policy for the development of the justice sector for the period 2015–2025;
- The adoption, on 9 October 2007, of a national policy and strategies for child protection for the period 2008–2012;
- The development of tools to publicize the Act on violence against women and girls;
- The development of programmes and projects by various government agencies, civil society organizations and development partners;
- The implementation of a national policy and strategy for social protection between 2004 and 2013 with the aim of supporting vulnerable individuals, households and communities, with a strategic focus on child protection;
- The adoption of a strategy for growth for poverty reduction for the period 2011–2015, which includes measures to promote the family and to protect and ensure child development, particularly by facilitating access to health care;
- The adoption of a national action plan for the family for the period 2009–2016, which analyses the socioeconomic situation of families in Benin in order to define strategic priorities for the economic empowerment of families, the improvement of access to social services and the protection of families with special needs;
- The adoption of a national action plan for the elimination of the worst forms of child labour in Benin for the period 2012–2015;
- The adoption of a national education and training policy for girls, the aim of which was to achieve gender parity in education and training by 2015;
- The implementation of the International Programme on the Elimination of Child Labour (IPEC) of the International Labour Office (ILO) from 1997 to 2014;
- The Economic Community of West African States (ECOWAS) II programme (2012–2013), whose aim was to monitor the prevalence of child labour in mines and quarries;
- The introduction of a monitoring system for child labour in Benin by the Ministry of Labour and Public Service with the support of IPEC and the ECOWAS II programme in 2013;
- The signing of a good governance charter in February 2012 in order to strengthen governance in Benin;
- The development of a practical guide to birth registration for users, health workers, registration clerks and other civil registry officials in 2013–2014 by the Ministry of the Interior and Public Security with the support of UNICEF;
- The organization of training and awareness-raising workshops for judges, labour inspectors, lawyers, police officers and gendarmes, members of the National Steering Committee on Child Labour, employers, social partners, NGOs and journalists on ILO Conventions Nos. 138 and 182 and on national laws to protect children from all forms of exploitation and trafficking;
- The carrying out of a study on violence against women and girls, and the adoption of a national action plan to combat violence against women.

3.3 Prisons

29. Benin currently has 10 functioning civilian prisons, including a new facility in Abomey-Calavi.

30. Considerable efforts are being made to improve the everyday life of detainees, to facilitate their access to drinking water and health care, and to bring places of detention into line with international standards.

31. These changes involve building new prisons and adopting a health plan for prisons in Benin.

3.4 Training provided to law enforcement and medical personnel

32. Training sessions are organized by various governmental and non-governmental entities for medical and prison staff, gendarmes stationed in prisons, prosecuting and trial judges, criminal investigation officers and court clerks.

33. These training sessions mostly focus on the rights of prisoners, women and children. Information sessions for the general public are also organized.

Examples within the Ministry of Justice and Legislation

- Human Rights Directorate:
    - The implementation of a programme for establishing trained local networks of human rights focal points in the communes and secondary schools has made it possible to train a number of focal points;
    - These individuals serve as human rights advocates at the community level. Under the programme, 1,112 individuals in 58 communes have received training;
    - "Legal clinics" organized to coincide with various human-rights-themed events with a view to empowering the population to assert their fundamental rights and facilitating the large-scale dissemination of human rights instruments.
- Directorate for the Judicial Protection of Children and Young People:
    - The provision of training for juvenile judges, law enforcement personnel and NGOs on techniques for listening to children who are in conflict with the law, and on the laws protecting children in the justice system;
    - The training of community-based actors for the preparation of a manual about children and the justice system, with the support of Terre des Hommes International Federation and UNICEF;
    - The conduct of training in the use of the manual in 28 communes in 2013;
    - The implementation by FIACAT and ACAT Benin of a project to combat unlawful pretrial detention in three prisons with very high rates of overcrowding and pretrial detention by informing detainees of their fundamental rights and reducing overcrowding in places of detention by introducing improved procedures to enable State actors and civil society to identify cases of unlawful detention;
    - The development of a guide on judicial guarantees for detainees in Benin intended for legal professionals, prison staff, persons working in a prison setting (members of civil society organizations, social and religious workers), and all citizens with an interest in prisoners' rights, which describes the detainee's entire journey from the time he or she is charged by the investigating judge to his or her release;
    - The holding of training courses by NGOs such as ACAT Benin on the guide on judicial guarantees for detainees in order to bring court clerks, sentencing judges, members of civil society, religious and social workers and lawyers up to speed on criminal procedure in Benin, as part of the project to combat unlawful pretrial detention;
    - The holding of a training workshop on women's rights for criminal investigation officers, health workers and medical staff, civil society and community-based organizations, local elected officials and elders at the Songhai Centre in Porto-Novo on 27 May 2011 by AFJB in the context of the implementation of the ETODE programme funded by the European Union

and by Cooperative for Assistance and Relief Everywhere (CARE) Benin/Togo;

- The holding of training and information sessions on the Act on violence against women and girls in the communes located in the central part of the country and in all districts of Adja-Ouèrè, Kétou and Ouidah as part of the project to combat violence against women and girls led by the Beninese Association for Child and Family Welfare (ABAEF), with the support of the Open Society Initiative for West Africa (OSIWA) in 2012–2013 and 2015–2016. The project included the widespread distribution of plain-language pamphlets on the Act. These sessions are complemented by interactive broadcasts, in French and in the national languages spoken in the area, that specifically address the prohibition of the use against women of physical and psychological torture and other cruel, inhuman or degrading treatment or punishment.

3.5 Jurisprudence concerning the implementation of the Convention

34. The decisions handed down by the Constitutional Court and other courts and tribunals all contribute to the promotion and protection of human rights. International legal instruments are also applied by these courts pursuant to article 147 of the Constitution, which establishes the primacy of international instruments over national law. However, judges in ordinary courts continue to encounter difficulties in applying these laws owing to the fact that torture and related forms of punishment are not defined in the criminal law.

3.6 Proceedings before the Constitutional Court

35. The Constitutional Court receives, and rules on the admissibility of, claims of human rights violations. For the purposes of the present report, it establishes whether there has been a violation of article 18 of the Constitution and rules on the admissibility of complaints concerning guarantees of fundamental rights and public freedoms on the basis of articles 8 (1), 15 and 18 (1) of the Constitution, which respectively state that "the human person is sacred and inviolable"; "all individuals have the right to life, liberty, and security and integrity of person"; and "no one shall be subjected to torture or to inhuman or degrading punishment or treatment".

36. There is extensive jurisprudence on this subject.

37. As to guarantees of fundamental rights and public freedoms, 844 cases were brought before the Constitutional Court between 2012 and October 2016 as follows: 128 cases in 2012; 100 cases in 2013; 177 cases in 2014; 303 cases in 2015; and 136 cases between January and October 2016 (see *www.cour.constitutionnelle-benin.org*).

38. As to complaints of torture, many citizens bring constitutional challenges on the basis of various provisions of the Constitution before the Court, including against human rights violations, particularly under articles 15, 18, 19, 35 and 36, and under articles 206 to 210 of the new Code of Criminal Procedure. These provisions relate to compliance checks, offences against physical and moral integrity, arrest, arbitrary police custody or detention and cruel or degrading treatment.

39. The decisions of the Constitutional Court generally confirm whether the article of the Constitution concerned has been violated, or the claim should be declared inadmissible, or dismissed, or the Court lacks jurisdiction, or there is a lack of awareness of article 6 of the African Charter on Human and Peoples' Rights. If a claim is found to be inadmissible, the Court sometimes hands down a decision automatically. An example is decision DCC 15-078 of 12 February 2015, in which the Court stated that Messrs. A. R. and Z. had violated article 18 (1) of the Constitution and that the chief police superintendent of Abomey-Calavi had violated article 35 of the Constitution.

40. In other decisions, the Court determined whether there was a violation of article 18 (1) or article 4 of the Constitution concerning torture.

41. In cases of violations of article 18 of the Constitution, there are other decisions of the Constitutional Court concerning torture, such as:

- A decision handed down in March 2012 in which the Constitutional Court held that the chief of police of Houégbo, a village in the south of the country, had violated article 18 of the Constitution on torture and cruel, inhuman or degrading treatment or punishment when he ordered his officers to arrest, tie up and beat an employee of a security company who had a dispute with his supervisor over the repayment of a debt;
- Decision DCC 12-095 of 26 April 2012, handed down after legal proceedings were instituted against a police officer on duty at the military supply corps in Cotonou and others "for unlawful arrest, detention or confinement, wilful bodily harm, violence or assault";
- Decision DCC 13-066 of 9 July 2013, handed down after a woman brought a constitutional challenge against acts of trespass, abuse and cruel, inhuman and degrading treatment or punishment committed against her by the police chief of Fidjrossè and his associates;
- Decision DCC 14-047 of 4 March 2014, handed down after a constitutional challenge was brought against the acts committed against an individual by the Cotonou municipal police on 31 July 2012;
- Decision DCC 14-176 of 22 September 2014, handed down after legal proceedings were instituted against a police inspector for inhuman and degrading treatment;
- Decision DCC 15-024 of 12 February 2015, handed down after legal proceedings were instituted by a group of individuals against members of the Oro sect in Kpankoun.

Cases of arbitrary arrest and detention

42. Although the Constitution and the law prohibit arbitrary arrest and detention, the security forces have not always respected these prohibitions.

43. For example, the Constitutional Court regularly intervenes in cases of unlawful police custody and excessive pretrial detention. An example is decision DCC 15-078 of 9 April 2015, which involved a constitutional challenge brought against a police chief for arbitrary detention (which took place in 2012) under article 18 (4) of the Constitution and article 6 of the African Charter on Human and Peoples' Rights. The Court held that the detention was not arbitrary, but that it was unlawful because it exceeded the 48-hour limit prescribed by law.

44. In the following cases, however, the Court found that torture had not been committed and that there had therefore been no violation of article 18 of the Constitution:

- Decision DCC 13-004 of 15 January 2013, handed down after legal proceedings were instituted against Messrs. XX and against Cotonou's central police station;
- Decision DCC 12-004 of 17 January 2012, handed down after legal proceedings were instituted against the deputy chief of Zogbodomey Brigade for "wilful bodily harm and cruel, inhuman and degrading treatment";
- Decision DCC 12-031 of 16 February 2012, handed down after legal proceedings were instituted against the commander and the deputy commander of Allada Brigade for "unlawful and arbitrary arrest, unlawful police custody and harsh, inhuman and degrading treatment", with a claim for damages;
- Decision DCC 13-014 of 7 February 2013, handed down after legal proceedings were instituted against the commander of the Porto-Novo Search Brigade for "abuse of authority, excessive zeal and arbitrary arrest";
- Decision DCC 13-107 of 3 September 2013, handed down after legal proceedings were instituted against a police inspector, the commander of the Porto-Novo Anti-Crime Brigade and his associates for deprivation of the liberty of a person and that person's family;

- Decision DCC 13-161 of 29 October 2013, handed down after legal proceedings were instituted by Mr. Firmin Odjo against the company commander of the Porto-Novo Gendarmerie and his associates for inhumane and degrading treatment and arbitrary arrest;
- Decision DCC 14-046 of 4 March 2014, handed down after legal proceedings were instituted by an individual against a member of the National Assembly "for violations of articles 18 (1), 35 and 36 of the Constitution";
- Decision DCC 14-047 of 4 March 2014, handed down after a constitutional challenge was brought against the acts committed against an individual by the Cotonou municipal police on 31 July 2012;
- Decision DCC 15-012 of 22 January 2015, handed down after a constitutional challenge was brought in connection with the treatment meted out to judge Angelo D. Houssou by the director-general of the national police;
- Decision DCC 15-070 of 26 March 2015, handed down after legal proceedings were instituted by an individual against the head of the Kétou municipal police for degrading treatment and arbitrary police custody.

3.7 Proceedings before the ordinary courts

45. No data are available on cases brought for torture or cruel, inhuman or degrading treatment.

46. No statistics on this subject are available from the Jurisprudence Department of the Directorate for Civil and Criminal Affairs and Pardons.

3.8 Complaints, inquiries, indictments, proceedings, sentences, reparation and compensation relating to acts of torture and other cruel, inhuman or degrading treatment or punishment

47. Various mechanisms are in place to facilitate the conduct of impartial investigations into complaints of torture or ill-treatment made against public officials:

- Acts can be reported to the competent administrative authority or to the alleged perpetrator's superior with a view to administrative or disciplinary sanctions being imposed.
- Complaints can be filed with the public prosecutor with a view to legal proceedings being instituted. In this connection, it is important to note that the public prosecutor is obliged, even in the absence of a complaint, to conduct an objective and impartial criminal investigation "whenever there are reasonable grounds for believing that an act of torture has been committed".[1]
- Cases can be referred to the Constitutional Court on the basis of a violation of article 18 (1) of the Constitution, concerning the right not to be subjected to torture.

48. Since torture is not yet defined as an offence in the Bouvenet Criminal Code of 1877, which is still in force, in ordinary courts complaints of torture may not be characterized as such.

3.9 Difficulties in implementing the Convention

49. The main difficulty lies in the delay in adopting the new version of the Criminal Code.

50. Although the Code of Criminal Procedure criminalizes torture, the ordinary courts need a legal basis for their decisions. Even acts that visibly amount to torture may only be characterized as bodily harm or similar offences, thus precluding the effective gathering of statistics on the phenomenon.

[1] Article 38 (3) of the Code of Criminal Procedure.

51. Legal proceedings instituted before the Indictment Chamber, a court of second instance for cases involving police officers involved in criminal investigations, for unlawful detention, ill-treatment or other cruel, inhuman or degrading treatment often result in the imposition of administrative rather than judicial sanctions.

52. Although the national torture prevention mechanism was established in article 808 of the Code of Criminal Procedure, it can only be made operational through the adoption of an implementing decree.

Part III
Additional information requested by the Committee

Replies to the Committee's concerns

1. Definition of torture (new measures taken under arts. 1 and 4 of the Convention; art. 209 of the bill on the new criminal code, which is awaiting adoption)

53. The bill on the new criminal code, which was adopted by the Council of Ministers on 16 May 2001 and submitted to the National Assembly in accordance with Presidential Decree No. 2001-189 of 19 June 2001, has not yet been adopted. It is still being reviewed by the Law Commission of the National Assembly and has been altered significantly over time.

54. The draft criminal code and the Code of Criminal Procedure define torture as a specific offence, in accordance with article 1 of the Convention, and establish related rules of procedure that are designed to protect human rights.

55. As of September 2013, article 209 of paragraph 4, on violence and torture committed by a public official, of the draft criminal code that is before the National Assembly defines the offence of torture and establishes the corresponding penalties:

> Any public official or other person acting in an official capacity who, in the performance of or in connection with his or her duties, carries out, instigate, consent to or acquiesce in the intentional infliction of severe pain or suffering, whether physical or mental, on a person for such purposes as obtaining from that person or a third person information or a confession, punishing the person in question for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing that person or a third person, or for any reason based on discrimination of any kind, shall be liable to a penalty of 10 to 20 years' imprisonment.
>
> If these acts of violence and torture cause permanent disability, the loss of an organ or death, the perpetrator shall be sentenced to life imprisonment.
>
> The same penalties apply to those who are complicit in the offence.
>
> An order from a superior officer or a public authority may not be invoked as a justification of torture.

56. In this way, torture, as defined in article 1 of the Convention, is established as an offence punishable by imprisonment, and the same penalties are established for complicity in torture, in the draft criminal code that is before the National Assembly.

57. *Adopted legislation*: Articles 38 and 825-2 of Act No. 2012-15 of 18 March 2013, establishing the current Code of Criminal Procedure, refer to the offence of torture and acts of barbarism.

58. The Committee's recommendation as to the establishment of appropriate penalties which take into account the grave nature of the acts committed has also been addressed, for the above-mentioned penalties are progressive: the term of imprisonment ranges from 10 to 20 years, and life imprisonment is imposed in the event of organ loss or death.

59. The same penalties apply to those who are complicit in the offence.

2. Absolute prohibition of torture (arts. 2 and 15 of the Convention)

60. The draft criminal code reaffirms the provisions of the Constitution and the African Charter on Human and Peoples' Rights in which torture and all other cruel, inhuman or degrading treatment are expressly prohibited. It clearly prohibits torture inflicted by or at the instigation of or with the consent or acquiescence of any public official or other person acting in an official capacity, in the performance of or in connection with his or her duties, thus establishing the personal responsibility of all public officials, whether they are acting in an official capacity or on their own initiative. The notion of consent or acquiescence is included as a gauge of culpability for offences committed under this article of the draft criminal code.

61. Article 209 of the text clearly states that an order from a superior officer or a public authority may not be invoked as a justification of torture.

3. Obligation to investigate and right to complain (art. 12 of the Convention)

62. Article 12 of the Convention states: "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

63. The third and fourth paragraphs of article 38 of the aforementioned Act No. 2012-15 of 18 March 2013, establishing the Code of Criminal Procedure, clearly stipulate that an investigation must be conducted even if the victim has not lodged a complaint:

> However, in all cases where there is reasonable ground to believe that an act of torture has been committed, the public prosecutor must proceed immediately to an objective and impartial investigation, even if the victim has not lodged a complaint.
>
> The public prosecutor is also entitled to initiate proceedings ex officio in connection with any other matter.

64. Any person, irrespective of nationality, has the right to submit a complaint about any infringement of human rights to the relevant State bodies, such as the Constitutional Court, the Ministry of Justice, the police, the gendarmerie and the courts, or even to NGOs working in the relevant field. Any non-judicial bodies that receive complaints of this kind are responsible for informing the competent authorities, in order to ensure justice for victims.

65. Section III, on the responsibilities of the public prosecutor, and more specifically, article 38 *et seq.* of the Code of Criminal Procedure, which has already been adopted and promulgated, clearly establish the following:

The public prosecutor shall receive complaints and reports of wrongdoing and shall decide how to deal with them. In cases where no further action is to be taken, the prosecutor shall inform the complainants and, if applicable, their legal counsel of their right to sue for damages if they so wish. However, in all cases where there is reasonable ground to believe that an act of torture has been committed, the public prosecutor must proceed immediately to an objective and impartial investigation, even if the victim has not lodged a complaint. The public prosecutor is also entitled to initiate proceedings ex officio in connection with any other matter.

66. Article 39 of the same Code provides that "any duly constituted authority, public official or civil servant who, in the discharge of his or her duties, is made aware of a serious or lesser indictable offence must report it immediately to the public prosecutor and transmit to the latter all relevant information, official records and documents".

67. Article 40 reads as follows:

> The public prosecutor shall take, or oversee the taking of, all necessary measures relating to the investigation and prosecution of criminal offences. To this end, the public prosecutor shall supervise the criminal investigation officers and detectives under his or her jurisdiction. He or she shall have the same powers and prerogatives as a criminal investigation officer. In the event of a flagrant offence, the public

prosecutor shall exercise the powers conferred upon him or her by article 68 of the present Code. In the performance of his or her duties, the public prosecutor has the right to call upon law enforcement officers directly.

68. The powers conferred upon the prosecutor and all competent authorities and the provision made for ex officio proceedings in the Code of Criminal Procedure clearly illustrate that Benin is committed to complying with article 12 of the Convention, and they leave no room for doubt as to the obligation of the competent authorities to institute, systematically and on their own initiative, when there is no prior complaint from the victim, objective and impartial inquiries, and to request the assistance of law enforcement officers if needed, in all cases where there is reasonable ground to believe that an act of torture has been committed.

4. Investigation of all allegations of acts of torture and ill-treatment, including those committed between 1972 and 1990, and of impunity resulting from the Amnesty Act of 1990, establishment of a truth commission to shed light on those allegations and abrogation of the Amnesty Act of 1990 with a view to prosecuting and punishing the perpetrators of those acts

69. No additional information is available on this subject. However, if cases are submitted to judicial or other competent authorities, action will be taken.

70. The State has not deemed it appropriate to review Act No. 90-028 of 9 October 1990, which, it should be recalled, provides for an amnesty for acts other than those covered by ordinary law committed between 26 October 1972 and 1990, especially as the period of admissibility for criminal prosecution has now expired for most of the acts committed during that period.

71. Nevertheless, the State is willing to assume its civil responsibilities with respect to the allegations of torture if there are any cases that have not yet been settled by the committee for the compensation of victims of injury caused by the State, established by Decree No. 98-23 of 29 January 1998.

72. Thus far, no steps have been taken to set up a truth commission to deal with acts committed during the period in question.

5. Obligation to establish a fully independent complaints mechanism for all victims of torture and to ensure that measures are adopted to afford adequate protection to all persons who report acts of torture or ill-treatment (arts. 13 and 14 of the Convention)

Establishment of a fully independent complaints mechanism

73. Act No. 2012-36 of 15 February 2013 and Implementing Decree No. 2014-315 of 6 May 2014 provide for the establishment of the Benin Human Rights Commission. The process of establishing the Commission is under way.

74. A preliminary bill on the establishment of a national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, which has been under preparation since 2007 and has been approved by the National Commission on Legislation and Codification, is awaiting adoption.

75. In 2009, the Law Commission organized a seminar for various members of the justice system on incorporating the suggestions made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into the Code of Criminal Procedure. The Code now provides for several implementing decrees, including:

- In article 808:
    - A decree establishing the composition and powers of the oversight commission that has been set up for each prison;
    - A decree setting forth the conditions under which certain natural or legal persons may be permitted to visit detainees.

- In article 809, a decree establishing the organization and internal regulations of prisons.

Victim and witness protection (arts. 13 and 14 of the Convention)

76. Taking into account the important role played by witnesses in judicial proceedings, witness protection is provided for in articles 120 to 124 of the Code of Criminal Procedure.

77. Thus, under the terms established by law for their protection, witnesses may be permitted not to reveal their identity, their address or even their voice, subject to the authorization of the public prosecutor, the investigating judge or the presiding judge. Witnesses may give the address of the relevant police station or gendarmerie unit as their place of residence, as appropriate. Their address is then recorded in a special register, in which the entries are numbered and initialled. This decision may be made by the presiding judge of the court of first instance, at the request of the public prosecutor, in proceedings concerning a serious or lesser offence punishable by at least 5 years' imprisonment, if the hearing is likely to gravely endanger the life or physical integrity of the witnesses or of their family or others close to them.

78. The second paragraph of article 122 states that "the disclosure of the identity or address of a witness protected by the provisions of articles 120 and 121 shall be punishable by a term of 3 to 5 years' imprisonment and a fine of 100,000 to 500,000 CFA francs".

79. However, the third paragraph of that article states that "article 120 is not applicable if, in view of the circumstances in which the offence was committed or the status of the witness, his or her identity must be disclosed to enable the exercise of the defendant's procedural rights".

80. Article 124 provides that a person cannot be convicted solely on the basis of statements made under the conditions set forth in articles 120, 121 and 122 of the Code of Criminal Procedure.

81. The law does not specifically provide for victim protection.

82. Nonetheless, steps can be taken under the existing legal framework and by way of the independent mechanisms set up by NGOs to enable victims of torture and ill-treatment to file complaints and have their cases examined promptly and impartially.

83. Until a decree is adopted establishing a torture prevention mechanism, and the Benin Human Rights Commission begins work, assistance may be sought from the competent departments of the ministries of justice, family affairs and labour and from NGOs.

6. Regulation of expulsion, refoulement and extradition (arts. 3 and 8 of the Convention)

Benin is requested to adopt a legislative framework regulating expulsion, refoulement and extradition in fulfilment of its obligation under article 3 of the Convention.

84. Extradition is now governed by the provisions in part XIII of the Code of Criminal Procedure (arts. 727–770).

85. These articles provide a clearer definition of extradition and regulate it more effectively. Extradition is the act whereby a State hands over a foreign national found in its territory to another State, at the latter's request, for the purpose of prosecution of one or several ordinary offences or execution of a prison sentence handed down to the foreign national by a criminal court in the requesting State.

Benin is requested, in particular, to amend article 21 of the draft criminal code to include the "danger of being subjected to torture" as one of the grounds for the refusal of extradition, as required by article 3 of the Convention.

86. No action has been taken thus far.

87. In the new draft criminal code, article 21 no longer relates to the danger of being subjected to torture.

88. It is worth noting, however, that the danger of being subjected to torture is taken into account as a ground for the refusal of extradition, as required by article 3 of the Convention.

The expulsion, refoulement and extradition of individuals, including undocumented individuals, should be decided by a court after careful assessment of the risk of torture in each case and should be subject to appeal with suspensive effect.

Extradition and expulsion

89. Extradition and expulsion are subject to conditions established by law. Current legislation provides for a process whereby judicial decisions are handed down. This process involves the public prosecutor, the investigating judge and the indictments chamber (arts. 727–770 of the Code of Criminal Procedure).

90. Definitive expulsion from the territory of Benin is provided for in section 2 of the draft criminal code, on criminal abuse of office and failure in the duty to act with honour and integrity, and more specifically paragraph 1, on the corruption of national public officials, including all judges and prosecutors; all administrative and judicial authorities appointed by decree or order, irrespective of status or position; all jurors; all elected office holders; all ministerial officers; all senior civil servants; all court experts, tax, treasury and customs officials and project coordinators; all military and paramilitary officials; all tax collectors and tax collection clerks; and all de facto accountants, whether they are permanent State employees or not (arts. 809–812 of the draft criminal code).

91. Definitive expulsion from the territory of Benin is established as an ancillary penalty, to be enforced after execution of the primary penalties. Definitive expulsion of a convicted foreign national is covered by article 812, subparagraph (2) (5°) of the draft criminal code.

Refoulement

92. Refoulement, an administrative measure that falls within the remit of the ministry responsible for security, is not covered by the Code of Criminal Procedure or the draft criminal code.

The terms of judicial cooperation agreements signed with neighbouring countries should be revised to ensure that the transfer of detainees to another signatory State is carried out under a judicial procedure and in strict compliance with article 3 of the Convention.

93. The Code of Criminal Procedure contains provisions that serve as the ordinary legal framework for extradition; however, those provisions are not applicable if an extradition convention has been signed, unless they deal with matters that are not covered by the convention.

94. Relevant conventions include:

- The General Convention on Judicial Cooperation, ratified by Benin through Act No. 61-51 of December 1961
- The judicial cooperation agreement between France and Benin, ratified through Ordinance No. 76-19 of 27 February 1975
- The criminal police cooperation agreement of 10 December 1984 between the Republic of Ghana, the Federal Republic of Nigeria and the Republic of Togo
- The Rome Statute of the International Criminal Court, signed in Rome on 17 July 1998, ratified by Benin on 22 January 2002
- The memorandum of understanding between the Republic of Benin and the Federal Republic of Nigeria, signed in Badagry, Nigeria, on 14 August 2003

95. As things currently stand, some cooperation agreements are not in line with the Committee's recommendations.

7. Fundamental safeguards

Access to legal assistance (arts. 2 and 11 of the Convention)

96. The Code of Criminal Procedure contains provisions to ensure that persons held in custody are effectively protected from physical and mental harm. It provides for access to legal assistance from the moment a person is taken into custody.

97. Criminal investigation officers are required to inform all persons held in custody of their right to consult a lawyer and a doctor of their choice and to contact and receive visits from a family member (art. 59 of the Code of Criminal Procedure).

98. Article 60 deals with minors: "Any persons under the age of 18 who are taken into custody shall be detained under the effective control of the public prosecutor, in facilities separate from those used for adults."

99. Steps have also been taken to appoint a liberties and detention judge, who, like an investigating judge, deals with proceedings relating to the imposition of pretrial detention and may impose or extend a period of pretrial detention by issuing a reasoned order following a public hearing (arts. 46, 144 *et seq.* of the Code of Criminal Procedure).

100. With the support of UNICEF, the Association of Women Barristers of Benin (AFAB) provides free legal assistance to minors as soon as they are taken into custody.

The principle of presumption of innocence, which is enshrined in article 145 of the Constitution

101. The right to the presumption of innocence is enshrined in article 17 of the Constitution and article 145 of the Code of Criminal Procedure.

102. Article 145 reads as follows: "Detention cannot be imposed on a person unless he or she has been convicted, with the exception of police custody and pretrial detention."

103. The accused, who is presumed innocent, remains at liberty. However, for the purposes of the investigation, he or she may be subject to some degree of court supervision.

104. The accused may also, as an exception, be placed in pretrial detention.

105. Since these principles have now been codified, judges are required to apply them in order to ensure the proper administration of justice.

106. Violations of the principle of presumption of innocence are prevented, remedied and punished, subject to conditions established by law.

Reparation for victims of wrongful detention on remand or in police custody

107. This type of reparation is provided for in section XVII of the Code of Criminal Procedure, on compensation for wrongful detention on remand or in police custody (arts. 206–210 of the Code of Criminal Procedure).

108. In addition, article 883 (17) of the Code of Criminal Procedure deals with issues relating to compensation and assistance granted to victims of miscarriages of justice, retrial costs, and assistance provided to individuals who are acquitted and discharged, subject to the conditions and procedures established by law.

> Article 883: Costs shall be understood to include, without distinction as to investigation and prosecution costs in the criminal and police spheres, the expenses included in the following list, which is not exhaustive:
>
> ...
>
> 17 - compensation and assistance granted to victims of miscarriages of justice, retrial costs, and assistance provided to individuals who are acquitted and discharged, subject to the conditions and procedures established by law.

8. Administration of justice

109. In order to ensure equal access to justice for all and the right to a fair trial within a reasonable time frame, several new courts, with appropriate infrastructure that meets the relevant standards, have been set up since 2011 under Act No. 2001-37 of 27 August 2002 on the organization of the judiciary.

110. Courts of first instance (category 2) were set up in Abomey-Calavi (Atlantique Department) in October 2011 and in Allada (Atlantique Department), Pobé (Plateau Department), Savalou (Collines Department), Djougou (Donga Department) and Aplahoué (Couffo Department) in 2012.

111. A prison health plan has been drawn up and two bills, on managing specialized personnel and on bringing the prison system into line with standards, have been drafted.

112. The State has continued to recruit and train judicial personnel. For example, between 2008 and 2012, 66 judges, 40 registrars and around 100 justice officials were recruited and trained.

113. Two cohorts of police officers, each consisting of 1,000 officers, have been recruited since 2006 in order to expand criminal investigation police departments throughout the country.

114. Significant efforts have been made to improve judicial data collection (see annex 1: statistics on the criminal justice system in Benin for the period 2011–2015). The same is true of prison data, which are used to keep track of the number of suspects, defendants and convicted persons and the handling of cases by the courts (see annex 2: statistics on the general situation in civilian prisons in Benin from 2011 to June 2016).

115. New prisons are gradually being built; one has been built in Abomey-Calavi, for example.

116. The courts in Abomey-Calavi and Abomey have been granted the status of child-friendly courts, for they have special areas for dealing with cases of children in conflict with the law.

9. Allegations of widespread corruption among judges and police and gendarmerie officers

117. Many measures are being taken to combat corruption in Benin:

- The legal framework in this area has been strengthened with the adoption of Act No. 2011-20 of 12 October 2011 on combating corruption and related offences.
- The institutional framework in this area has also improved with the establishment of the National Anti-Corruption Authority, which is up and running.
- An inspectorate general has been established in all ministries.
- A toll-free hotline has been set up to allow people to report evidence of corruption to the Office of the President of the Republic.
- The number of checkpoints on main roads has been reduced.

118. The Inspectorate General of Judicial Services of the Ministry of Justice receives and investigates complaints and refers cases to the Minister of Justice for examination by the Supreme Council of Justice. It monitors the work carried out by the courts to ensure that they function properly and that ethical standards relating to public service are upheld. It checks and monitors whether the tasks assigned to courts are performed correctly and in compliance with prevailing legislation. It is responsible for conducting administrative inquiries into the personal or professional conduct of judges and registry staff, ahead of any disciplinary inquiry that may be carried out.

119. In addition, many organizations and institutions have been established by the authorities or on the initiative of civil society to combat corruption. These include Front des Organisations Nationales contre la Corruption (Alliance of National Anti-Corruption

Organizations) and Association de Lutte contre le Racisme, l'Ethnocentrisme et le Régionalisme (Association for Combating Racism, Ethnocentrism and Regionalism).

10. Measures to make the judiciary fully independent, in accordance with the related international standards (arts. 2 and 12 of the Convention)

120. The public prosecutor decides whether to prosecute and how each case should be dealt with.

121. As regards legislation, the independence of the judiciary is enshrined in several important texts, including the Constitution, Organic Act No. 94-027 of 15 June 1999 on the Supreme Council of Justice and Act No. 2001-35 of 21 February 2003, establishing the regulations governing the judiciary. It is established in the fourth paragraph of article 115 of the Constitution, the second paragraph of article 126 and the second paragraph of article 133.

122. Under Act No. 2001-35 of 21 February 2003, establishing the regulations governing the judiciary, as a general rule, a judge's appointment may only be terminated for disciplinary reasons, through special proceedings (also applicable to prosecutors) that must take place before the Supreme Council of Justice. There are plans to reform the Council to ensure better protection for judges in the course of their work.

11. The Committee regrets that, under Beninese criminal law, a minor older than 13 may be sentenced to deprivation of liberty. The State party should take the necessary measures to raise the age of criminal responsibility to an internationally acceptable level.

123. The provisions on criminal proceedings involving children, in the Children's Code that has been adopted and promulgated, have not been amended to raise the age of criminal responsibility. However, minors who are 13 years old are eligible for supervision and assistance and exempt from criminal responsibility.

124. Article 187 of the Children's Code states: "The juvenile court shall prescribe appropriate measures of protection, assistance, supervision or education, depending on the case. It may, if the circumstances so warrant, hand down a criminal sentence to a child who is over the age of 13 years." The detention of minors is now regulated by articles 656 *et seq.* of the Code of Criminal Procedure.

12. Universal application of Beninese criminal law (arts. 6 and 8 of the Convention)

125. Chapter 4 of the draft criminal code provides for the universal application of Beninese criminal law (arts. 16–25). The provisions in question deal with "the spatial application of criminal law, particularly the rules relating to territorial jurisdiction, universal jurisdiction linked to the nationality of the perpetrator or victim of the offence, jurisdiction with respect to serious and lesser indictable offences committed against the State, jurisdiction with respect to offences committed abroad against children or against the State, or offences prosecuted under an international agreement, and criminal sentences handed down abroad".[2]

126. Furthermore, the Code of Criminal Procedure provides for cooperation with the International Criminal Court (Part XIV, Chapter 1: Judicial cooperation, arts. 771–789).

127. Since ratifying the Rome Statute of the International Criminal Court on 22 January 2002, Benin has assisted with the punishment of offences and has cooperated with the Court in prosecuting and enforcing the sentences of persons convicted of acts that constitute genocide, crimes against humanity or war crimes under articles 6–8 and 25 of the Statute.

[2] Excerpt from the Sept. 2013 version of the draft criminal code.

13. The Committee requests Benin to review the terms of the agreement between Benin and the United States of America whereby United States nationals in the territory of Benin cannot be transferred to the International Criminal Court to be tried for war crimes or crimes against humanity (arts. 6 and 8 of the Convention)

128. Benin takes note of this recommendation. To date, there is no record of any such acts and no suspicion that any such acts may have been committed.

14. Measures to grant all NGOs permanent and systematic access to detention facilities (art. 11 of the Convention)

129. Given that prisons are sensitive locations, NGOs working to protect human rights must obtain authorization if they wish to visit them in order to investigate detention conditions in Benin. This authorization is granted by the Directorate for Prison Administration and the Protection of Human Rights of the Ministry of Justice both for one-off activities and for ongoing projects.

130. ACAT Benin and other NGOs affirmed in an alternative report that their authorization had been renewed with each change of Government or that they had been granted renewable authorization for a period of six months.[3]

15. Necessary measures to enable the adoption of the bill on the national preventive mechanism and to accelerate the establishment of the mechanism (art. 11 of the Convention)

131. There are no changes to report.

132. Measures relating to the establishment of the national preventive mechanism are provided for in the second and fourth paragraphs of article 808 of the Code of Criminal Procedure.

16. Improving prison conditions (arts. 11 and 16 of the Convention)

133. Measures have been taken in prisons to improve the conditions of detention. Oversight commissions have been established to ensure regular and effective monitoring.

(a) Reducing overcrowding and the high number of prisoners in pretrial detention

134. Two new prisons have been built in Abomey and Abomey-Calavi. There are plans to build more new prisons.

135. A number of new courts were built in 2011 and 2012.

(b) Improving the food and health care provided to detainees

136. The prison health plan has already been adopted.

137. There are no other changes to report.

138. The quality of meals is monitored by each prison's oversight commission. In addition, the quality and quantity of food provided is checked during visits conducted by representatives of the Inspectorate General of Judicial Services, the Directorate for Prison Administration and the Protection of Human Rights and the Directorate for Correctional Education and Social Protection of Minors. A report is drawn up and submitted to the Minister of Justice.

[3] Updated version of the alternative report submitted by FIACAT, OMCT, the national office of ACAT Benin and AFJB in response to the periodic report of Benin on the implementation of the African Charter on Human and Peoples' Rights that was submitted for consideration at the forty-fourth session of the African Commission on Human and Peoples' Rights. The alternative report was based on a follow-up visit to Benin carried out in November 2008 by FIACAT and OMCT.

(c) Reorganizing prisons so that accused persons are detained separately from convicted persons and improving the conditions in which minors are detained

139. There are areas set aside for minors in most civilian prisons.

(d) Appropriate measures to put a definitive end to alleged corruption and ransom demands in prisons and measures to strengthen judicial supervision of conditions of detention

140. The problem has been acknowledged and remedial action is being taken to eliminate it. No death sentences have been handed down since 1987. The 13 prisoners currently on death row will not be executed. They are being held in the civilian prison of Akpro-Missérété, in the same conditions as ordinary prisoners, pending the adoption of the draft criminal code.

17. Deplorable conditions of detention of convicted prisoners on death row, which amount to cruel, inhuman and degrading treatment (art. 16)

141. Benin amended its national legislation to abolish the death penalty after its accession, on 5 July 2012, to the second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, which entered into force for Benin on 5 October 2012.

18. Bringing the Benin Human Rights Commission into line with the Paris Principles (arts. 11 and 13 of the Convention)

142. The act on the Benin Human Rights Commission has been adopted. The process of appointing the members of the Commission is under way.

19. Acts of violence committed by law enforcement officers (arts. 12 and 16 of the Convention)

143. Steps are being taken to combat all forms of violence and ill-treatment committed by law enforcement officers.

144. Allegations are made in the press and by NGOs. Prompt, impartial and effective investigations are conducted into these allegations and administrative or judicial penalties are imposed as appropriate.

20. Torture and cruel, inhuman or degrading treatment of children (arts. 1, 2, 12 and 16 of the Convention)

145. There is an observatory for women and children attached to the ministry responsible for family affairs.

- The Children's Code and the act on violence against women strengthen the system of support for women and child victims of violence.
- Projects are being undertaken by the Government and by NGOs to end physical and psychological violence against women and children.
- Studies are being carried out and reports issued on trafficking, exploitation, prostitution, female genital mutilation, rape and infanticide.

146. Measures taken to combat child labour and child trafficking include:

- The establishment of the National Observatory for the Protection of Children against Trafficking and Labour Exploitation by ABAEF with support from the ILO International Programme on the Elimination of Child Labour.
- The establishment of an inter-union observatory for monitoring compliance with the ILO conventions on child labour.

21. Corporal punishment in schools (Circular No. 100/MEN/CAB of 1962) (art. 16 of the Convention)

147. Legislation in this field has been supplemented by the recently adopted Children's Code, which prohibits corporal punishment and classes children who have suffered ill-treatment as children in a difficult situation (art. 119 (d)).

148. Awareness-raising and education campaigns have been conducted, with support from UNICEF, Plan International Benin and the ministries responsible for preschool and primary education and family affairs.

149. Administrative penalties are imposed on perpetrators of such offences, independently of any criminal proceedings brought against them.

150. With a view to preventing violence at school and meeting the "Basic Quality School" objectives set out in 2008, standards are set, implicitly or explicitly, in order to promote a culture of non-violence in schools, including through the establishment of a mechanism protecting pupils against all forms of violence at school, the creation of a safer working environment for pupils and teachers, efficient management of school time, and cooperation with parents and other members of the community. In this context, campaigns are conducted to raise awareness of the harmful effects of corporal punishment and bring about changes in behaviour.

151. In cooperation with UNICEF and Plan International Benin, the Ministry of Preschool and Primary Education has launched a campaign called "Learn without Fear". Awareness sessions are organized, and programmes and messages are broadcast via radio and television, in order to alert teachers to the dangers of inflicting corporal punishment. As part of this campaign, teachers are taught to use teaching and disciplinary methods that enable children to learn without fear and participate in lessons.

152. A number of other steps are being taken to combat discrimination, including efforts to promote self-defence education for children and non-discrimination measures to remedy institutional discrimination against girls.

153. Benin has introduced an incentive-based policy to increase the number of girls enrolled in school. This is implemented through activities at the local level, with the involvement of teachers, locally elected officials, women's groups and NGOs.

154. Initially, these activities were carried out in collaboration with members of the school community; for example, parents' associations participated in awareness-raising to promote school enrolment, microprojects for the issuing of civil status certificates to children and the establishment of alternative schools.

22. Violence against women

155. Appropriate measures taken to prevent, combat and punish violence against women include the adoption, in 2011, of Act No. 2011-26 of 9 January 2012 on the prevention and punishment of violence against women and girls. The draft criminal code covers the offences of domestic violence, marital rape, trafficking in women and all kinds of violence against children.

156. Part 2 of the draft, which consists of 137 articles, deals with the judicial protection of the family, as an individual's primary social environment, and establishes penalties for a range of offences linked to family relations, such as domestic violence, incest and traditional practices that are harmful to women; offences linked to parent-child relationships, such as neglect and offences against civil status; and offences linked to parental authority.

157. More specifically, articles 368 to 418 of paragraph 2 on offences against sexual freedom deal with sexual violence in general (arts. 368 and 369), indecent assault and rape (arts. 370–376), depravation of minors (arts. 377 and 378), offences relating to pimping, procuring and soliciting (arts. 379–390), forced prostitution, forced marriage, forced pregnancy, forced sterilization and sexual slavery (arts. 391–395), sexual harassment (arts. 396–404), bestiality (arts. 405–407), deliberate transmission of incurable sexually

transmitted infections (art. 408) and other sexual violence against children or adults (arts. 409–418).

158. Act No. 2011-26 of 9 January 2012 on the prevention and punishment of violence against women and girls has been translated into the national languages and brought to public attention in the course of dissemination and awareness campaigns on violence against women organized by the Government to encourage people to take ownership of the act's provisions and comply with them.

159. All women and girls who have suffered violence or other forms of torture or degrading treatment or corporal punishment, without distinction, have access to psychological support provided by the health services, by welfare centres and by counselling and listening services run by NGOs.

160. The welfare centres, which are overseen by the ministry responsible for family affairs, provide listening and support services for women. State-run initiatives in this area are supplemented by legal aid centres run by NGOs. Steps are also taken to conduct awareness-raising and provide training, listening services and psychosocial, technical and financial support in order to promote the rehabilitation and social reintegration of women and girl victims.

161. In addition, integrated support centres for victims of gender-based violence have been set up in Cotonou, Abomey and Parakou. A public prosecutor is appointed to these centres by order of the Minister of Justice. These centres are staffed by criminal investigation officers, doctors, psychologists, social workers and other professionals who have been trained to deal with cases of violence against women.

162. NGOs such as AFJB and AFAB and NGO networks work very hard to further the protection of women in various fields.

163. It is important to highlight the commitment and efforts of technical and financial partners such as UNICEF, UNDP and the European Union, which offer support to government agencies and NGOs.

164. Entities such as OSIWA support the National Institute for the Advancement of Women and NGOs such as ABAEF in the implementation of projects to combat violence against women and girls in Benin through dissemination of the relevant act and the provision of listening, follow-up and victim support services.

165. Leaflets about the act, produced by the ministry responsible for family affairs and by NGOs as a tool for the advancement of women, have been circulated widely in the course of training and awareness-raising activities.

166. As part of the project run by ABAEF and supported by OSIWA, a total of 3,110 participants attended 19 public awareness-raising and dissemination sessions on the act on violence against women and girls, held in the communes of Ouidah, Adjaouèrè and Kétou, and 520 women victims were listened to, received assistance and benefited from counselling programmes. The act is also brought to public attention on a daily basis in the press and by local radio stations in those communes.

With regard to children

167. The Children's Code prohibits abuse and ill-treatment, sexual abuse (arts. 190, 191, 203 and 378), early marriage (art. 181), child prostitution (arts. 383–386), corporal punishment (art. 119), child exploitation (arts. 203 and 210), sexual exploitation and depravation of minors (arts. 378–382), rape (arts. 345–348) and torture and inhuman treatment (arts. 342–344).

168. The Code also provides for the protection of children with disabilities and sick children. Furthermore, the Government has set up a transit centre for children in difficult situations, which is managed by the Central Office for the Protection of Minors, Family Affairs and the Prevention and Punishment of Human Trafficking, formerly known as the Brigade for the Protection of Minors.

23. Persistence of mob justice (art. 16 of the Convention)

169. Acts of mob justice are punished. Existing legislation provides for the arrest and prosecution of perpetrators of such acts, irrespective of whether a complaint has been filed by the victims or their beneficiaries.

24. Training on the prohibition of torture (art. 10 of the Convention)

170. A programme for the establishment and training of local teams and school clubs is being implemented by the Human Rights Directorate of the Ministry of Justice. The aim of the programme is to set up human rights units in communes and secondary schools. The Directorate works with senior officials in those settings to select people who are capable of running human rights training sessions. Those people are tasked with organizing awareness-raising activities in their respective settings on a regular basis. They thus serve as human rights advocates at the community level.

171. In total, 9 out of 12 departments — or 58 out of 77 communes — have benefited from this programme. An estimated 1,112 people have received training as part of this project.

172. Impact studies have not yet been carried out. However, in view of the enthusiasm shown for the programme by local and communal authorities, the Government plans to work on expanding and improving it and ensuring that it has a lasting impact.

173. Another human rights programme, involving the organization of legal clinics, is also under way. These clinics consist of ad hoc workshops held during various human rights celebrations to give the general public a better understanding of human rights. During these awareness-raising sessions, basic texts on human rights are disseminated widely among the population.

174. FIACAT and ACAT have launched a project to combat wrongful detention in the three prisons with the highest population of detainees. The project includes the provision of training on fundamental rights and legal safeguards. A guide has been produced for justice professionals, prison staff and detainees.

175. On 27 May 2011, a training workshop organized by AFJB was held for criminal investigation officers, health workers and medical staff of civil society organizations, community organizations, locally elected officials and elders at the Songhaï Centre in Porto-Novo. It was organized as part of the ETODE programme, which is financed by the European Union and CARE International.

25. Involvement of NGOs and academic experts in the review of national legislation, including the draft criminal code and the draft code of criminal procedure, with a view to bringing them into line with the provisions of the Convention

176. A seminar was organized in October 2010 by the Law Commission of the National Assembly for members of the judiciary and officials from the Legislation Directorate and the Human Rights Directorate of the Ministry of Justice, with a view to bringing the draft criminal code and the draft code of criminal procedure into line with international standards.

177. Most recommendations made by human rights treaty bodies were taken into account during this review. The draft code of criminal procedure was subsequently adopted and promulgated, as were the Children's Code and the act on violence against women and girls.

178. It should also be noted that experts were convened in 2013 to review and amend the draft criminal code in order to address various concerns. University professors, members of the review and amendment committee and members of the Law Commission helped to develop the current version of the draft criminal code, which is awaiting adoption.

179. The National Assembly now has before it a revised bill on the new criminal code which is consistent with the country's international obligations.

26. Data collection

180. The Programming and Planning Directorate of the Ministry of Justice keeps judicial statistics that provide an overview of court activities and prison capacity. These are managed by specialist statisticians using appropriate software and taking into account the indicators developed as part of the Ministry's comprehensive system for the production, analysis and management of statistics.

181. The case law department of the Directorate of Civil and Criminal Affairs and Pardons keeps data that has been disaggregated by gender, age, offence and field of law.

182. The Directorate for Prison Administration keeps data on the population of each prison in the country, disaggregated by gender, age group (adult/child) and number of pretrial detainees.

183. However, statistics on corruption among law enforcement officials and penalties imposed and on cases of extradition, expulsion or refoulement, including information on the handing over of detainees under subregional agreements, are not available.

27. Wide dissemination of the reports submitted by Benin to the Committee and the latter's conclusions and recommendations, in appropriate languages, through official websites, the media and NGOs

184. The reports submitted by Benin in accordance with its international commitments and the Committee's observations are disseminated at sessions of the National Advisory Council on Human Rights and the national committee responsible for monitoring the implementation of international human rights instruments and during other activities organized by the Human Rights Directorate.

Part IV
Compliance with the Committee's conclusions and recommendations

Measures taken by Benin to comply with the conclusions and recommendations issued by the Committee after its consideration of the initial and periodic reports of Benin

185. The legal framework for protection against torture and other cruel, inhuman or degrading treatment or punishment has been strengthened.

186. A national mechanism for the prevention of torture has been designated.

187. The Code of Criminal Procedure has been adopted. There are plans to hold a plenary discussion on the draft criminal code.

188. Legislation has been passed to support the provisions of articles 18 and 19 of the Constitution, which prohibit the use of torture in any proceedings and establish that no citizen or other individual is duty-bound to obey an order that constitutes a serious and manifest violation of human rights and public freedoms.

189. Perpetrators of acts of torture or other ill-treatment proven to have been inflicted during judicial investigations are regularly prosecuted and sentenced to criminal and disciplinary penalties.

190. The indictment chambers of the appeal courts impose penalties on criminal investigation officers that range from warnings to suspension from duty.

191. The Constitutional Court frequently hands down guilty verdicts for acts of torture and cruel, inhuman or degrading treatment.

192. Wrongful detention in police custody is prevented by regular visits to detention and custody facilities by representatives of existing mechanisms — including members of NGOs or departments of the Ministry of Justice and senior officials such as the Head of

State, ministers, members of the Law Commission, the Ombudsman and members of the National Assembly — and by awareness-raising during capacity-building sessions for criminal investigation officers.

Conclusion

193. Considerable progress has been made since the consideration of the second periodic report, particularly in terms of legislation, as torture has been defined and established as a criminal offence in the draft criminal code that is being adopted. The adoption of the new Code of Criminal Procedure has led to changes in the administration of justice and the treatment of detainees. The legal framework for the prevention of acts of violence, torture and cruel, inhuman or degrading treatment has been strengthened, and many programmes and projects have been implemented to raise public awareness and to train all those involved in the prevention and punishment of such acts.

194. Nevertheless, many challenges still lie ahead. These include:

- Getting the national mechanism for the prevention of torture up and running
- Adopting the draft criminal code as soon as possible
- Getting the Benin Human Rights Commission up and running in accordance with the Paris Principles
- Stepping up efforts to raise awareness among all sectors of the population
- Setting up new courts and building new prisons that meet international standards
- Providing continuous training for all those involved in prevention and punishment

195. Moreover, Benin will strive to comply with the international and regional mechanisms, procedures and principles established under the Convention.

196. Benin would greatly appreciate being assisted and supported in its efforts to improve awareness-raising, prevention and punishment of any acts and behaviour that constitute torture or other cruel, inhuman or degrading treatment, so as to ensure that no person — whether man, woman or child, vulnerable person or person with disabilities — is ever subjected to such acts and that all rights enshrined in the Convention may be fully exercised.